

Section-by-Section Analysis of H.R. 1085 NASA Flexibility Act of 2003

Section 1. Short Title.

“The NASA Flexibility Act of 2003.”

Section 2. Compensation for Certain Excepted Personnel.

Amends section 203(c) of the National Aeronautics and Space Act of 1958 to tie the pay scale for NASA Excepted (NEX) Employees to level III of the Executive Schedule rather than the obsolescent pay scale of grade 18 of the General Schedule. Directs that the amendment in this section takes effect on the first day of the first pay period beginning on or after the date of enactment of this Act.

Section 3. Workforce Authorities.

Amends the National Aeronautics and Space Act of 1958 to provide an additional title, “Title V - Workforce Authorities” with the following sections included under that title.

Section 501. Definitions.

Defines terms used in the text. Defines the term “critical need” as a specific and important requirement of NASA’s mission that the agency is unable to fulfill because NASA lacks the appropriate employees either because of the inability to fill positions or because employees lack the requisite skills. Defines the term “redesignation bonus” as a bonus which could be paid to an employee moving from one government job to another, including within NASA, without relocating to a different geographic region.

Section 502. Planning, Notification, and Reporting Requirements.

Requires the NASA Administrator to submit a Workforce Plan to Congress not later than 90 days before exercising any of the authorities under this title. The Workforce Plan shall be developed in consultation with the Office of Personnel Management. Requires that this Workforce Plan describe: (1) each of NASA’s critical needs and the criteria used in its identification; (2) the functions, approximate number, and classes or other categories of positions or employees that address critical needs and that would be eligible for each workforce authority provided in this title and proposed to be exercised, and how the exercise of those authorities with respect to the eligible positions or employees involved would address each critical need identified; (3) any critical need which would not be addressed by the workforce authorities provided in this title and the reasons why those needs would not be so addressed; (4) the specific criteria to be used in determining which individuals may receive the benefits described in sections 504, 505, and 506 (including, in the case of sections 504 and 505, the criteria for granting bonuses in the absence of a critical need), and how the level of those benefits will be determined; (5) the safeguards or other measures that will be applied to ensure that this title is

carried out in a manner consistent with merit system principles; (6) the means by which NASA employees will be afforded the notification required for the Workforce Plan or any modifications thereof; and (7) the methods that will be used to determine if the workforce authorities provided in this title have successfully addressed each critical need identified. Requires that NASA provide the Workforce Plan to all employees 60 days before exercising any of the workforce authorities provided in this title. Authorizes the NASA Administrator to modify the Workforce Plan, provided that not later than 90 days before implementing any such modifications the Administrator submit a description of proposed modifications to Congress and submit such description not later than 60 days beforehand to all employees. Directs that none of the workforce authorities provided in the title may be exercised in a manner inconsistent with the Workforce Plan. Requires the NASA Administrator to submit an evaluation and analysis of the actions taken under this title not later than six years after its enactment. Requires that this evaluation and analysis include: (1) an evaluation using the methods described in the Workforce Plan of whether the authorities exercised under this title successfully addressed each critical need identified; (2) to the extent that they did not, an explanation of the reasons why any critical need was not successfully addressed; and (3) recommendations for how the Administration could address any remaining critical need and could prevent those that have been addressed from recurring. Directs NASA to submit its annual performance plan to the Congress that it already submits to OMB under current law.

Section 503. Workforce Authorities.

Specifies the workforce authorities provided in each of the following sections of this title. Prohibits all Senate-confirmed Presidential appointees at NASA from being eligible to benefit from the workforce authorities under this title.

Section 504: Recruitment, Redesignation, and Relocation Bonuses.

Authorizes the NASA Administrator to pay recruitment, redesignation, and relocation bonuses to an individual in accordance the authority provided in this section and the Workforce Plan if the individual is: (1) newly appointed as an employee of the Federal Government; (2) currently employed by the Federal Government and is newly appointed to another position in the same geographic area; or (3) currently employed by the Federal Government and must relocate to a different geographic area to accept a position with the Administration. Authorizes recruitment, redesignation, and relocation bonuses under the following formula: (1) If the position addresses a critical need, the amount of a bonus may not exceed 50 percent of an employee's annual salary (including comparability payments) multiplied by an agreed-upon service period; (2) If the position does not address a critical need, the amount of a bonus may not exceed 25 percent of an employee's annual salary (including comparability payments) multiplied by an agreed-upon service period; and (3) In either case, the total bonus may not exceed the employee's annual salary (including comparability payments) at the beginning of the employee's period of service. Requires that payment of a bonus is contingent on the employee entering into a service agreement with NASA. Requires that the service agreement, at a minimum, establish:

(1) the required service period; (2) the payment schedule and method of payment which may include a lump-sum payment, installment payments, or a combination thereof; (3) the amount of the bonus and the basis for calculating such amount; and (4) the conditions under which the agreement may be terminated before the agreed-upon service period has been completed, and the effect of the termination. Requires that an employee's service period may not be less than six months and may not exceed four years. Requires NASA to establish a plan for paying such bonuses, subject to OPM approval, before paying a bonus under this section. Directs the NASA Administrator to submit an annual report to Congress with specific information about the bonuses paid under this section for the previous calendar year not later than February 28 of each year.

Section 505. Retention Bonuses.

Authorizes the NASA Administrator to pay higher retention bonuses than is provided under current law and in accordance with the authority provided in this section and the Workforce Plan if the Administrator determines that the unusually high or unique qualifications of the employee or a special need of NASA makes it essential to retain the employee and the employee would be likely to leave in the absence of a retention bonus. Authorizes retention bonuses under the following formula: (1) If the position addresses a critical need, the amount of a bonus may not exceed 50 percent of an employee's annual salary (including comparability payments); or (2) If the position does not address a critical need, the amount of a bonus may not exceed 25 percent of an employee's annual salary (including comparability payments). Requires that payment of a bonus is contingent on the employee entering into a service agreement with NASA unless NASA pays a retention bonus in biweekly installments to the employee. Requires that the service agreement, at a minimum, establish: (1) the required service period; (2) the payment schedule and method of payment which may include a lump-sum payment, installment payments, or a combination thereof; (3) the amount of the bonus and the basis for calculating such amount; and (4) the conditions under which the agreement may be terminated before the agreed-upon service period has been completed, and the effect of the termination. Requires that the service period may not be less than six months and may not exceed four years. Requires that an employee is not entitled to a retention bonus under this section during a service period when other bonuses were previously established for the employee. Requires NASA to establish a plan for paying retention bonuses, subject to OPM approval, before paying a retention bonus under this section. Directs the NASA Administrator to submit an annual report to Congress with specific information of the retention bonuses paid under this section for the previous calendar year not later than February 28 of each year.

Section 506. Voluntary Separation Incentives.

Authorizes the NASA Administrator to pay Voluntary Separation Incentive (VSI) payments up to 50 percent of an employee's annual salary if the employee is in a position that fills a critical need. Requires that VSI payments under this section are limited to only 10 employees in any calendar year, unless OMB approves a greater number of employees and Congress is notified. Requires that a NASA employee is not eligible to receive a VSI payment authorized under this

section if the employee received certain other bonuses in the previous twelve months. Requires the proposed use of workforce authorities in this section be included in the agency's plans to OPM on the intended use voluntary separation incentive payments required under current law. Directs NASA to submit a copy of its plan on the use of incentive payments to Congress within 15 days after OPM's approval of the plan.

Section 507. Term Appointments.

Authorizes the NASA Administrator to make term appointments within NASA for not less than one year and not more than six years. Authorizes the NASA Administrator to convert a term appointment to a permanent appointment in the competitive service within NASA without further competition if: (1) the individual was hired under the open, competitive examining procedures under current law; (2) the original announcement stated the appointment may be converted from term to career-conditional; (3) the individual has completed at least two years of the term appointment; (4) the employee's performance was at least fully successful or equivalent; and (5) the position is in the same occupational series and geographic location and provides no greater promotion potential than the term appointment. Authorizes the NASA Administrator to convert a term appointment to a permanent appointment in the competitive service within NASA through internal competitive procedures if conditions (1) through (4) above are met. Directs that an employee converted under this section becomes a career-conditional employee unless the employee has otherwise completed the service requirements for career tenure. Directs that an employee converted to career or career-conditional employment under this section acquires competitive status upon conversion. Directs the NASA Administrator to submit an annual report to Congress on the number of term appointments and conversions made for the previous calendar year not later than February 28 of each year.

Section 508. Pay Authority for Critical Positions.

Authorizes the NASA Administrator to fix the salary for up to 10 administrative, technical and professional positions described in the section to the salary level of the Vice-President prescribed in current law if the position addresses a critical need identified in the Workforce Plan and the position requires expertise of an extremely high level in scientific, technical, professional, or administrative fields. Directs that the NASA Administrator may not delegate this authority. Requires that an employee receiving pay at a rate fixed under this section may not be paid an allowance, differential, bonus, award, or similar cash payment during any calendar year that would cause the employee's salary total to exceed the annual rate of salary prescribed for the Vice-President under current law. Directs the NASA Administrator to submit an annual report to Congress on the number of critical positions established or disestablished during the previous calendar year not later than February 28 of each year.

Section 509. Assignments under the Intergovernmental Personnel Act.

Authorizes the NASA Administrator to extend the period of an employee's Intergovernmental Personnel Act (IPA) assignment up to four years, rather than two years provided under current law, following an initial two-year assignment with the concurrence of the employee and the government or organization concerned.

Section 510. Enhanced Demonstration Project.

Authorizes NASA when conducting a demonstration project to apply that project to "such number of individuals determined by the Administrator" rather than "not more than 5,000 individuals" as specified under current law.

Section 511. Termination.

Directs that the workforce authorities listed under section 503 shall terminate on October 1, 2009, except if certain specified conditions for salary, bonuses, or appointments made before the termination date are satisfied. Requires that this termination shall not: (1) affect any bonus payment under sections 504 or 505 agreed to by the employee and the Administration before the termination date; (2) prevent an employee from being allowed to complete a term appointment made under section 507 if the appointment was made before the termination date; (3) prevent the Administrator from converting any term employees to career or career-conditional status under section 507 if the term appointment was made before the termination date; (4) prevent an employee from continuing to receive a salary fixed under section 508 before the termination date; or (5) prevent an employee assigned under the Intergovernmental Personnel Act from completing the extended term made under section 509 if the extension was made before the termination date.